

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN BILL GLASER**, on March 17, 2003 at
3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Bill Glaser, Chairman (R)
Sen. Bob Story Jr., Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Edward Butcher (R)
Sen. Mike Cooney (D)
Sen. Jim Elliott (D)
Sen. Royal Johnson (R)
Sen. Jeff Mangan (D)
Sen. Tom Zook (R)

Members Excused: Sen. Don Ryan (D)

Members Absent: None.

Staff Present: Tari Elam, Committee Secretary
Connie Erickson, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 630, 3/12/2003; HB 656,
3/12/2003
Executive Action: HB 572; HB 573; HB 656; HB 285; HJR
8; HJR 10

HEARING ON HB 630

Sponsor: REPRESENTATIVE ALAN OLSON

Proponents: Bob Brown, Secretary of State; also on behalf
of Linda McCulloch, State Superintendent of
Public Instruction
Kathy Bramer, Member, Board of Land
Commissioners, on behalf of Linda McCulloch
Eric Feaver, President, MEA-MFT
Tom Figarelle, Forward Montana

Opponents: NONE

Informational Witnesses: Tom Schultz, Administrator, Trust Land
Management Division, Department of
Natural Resources & Conservation (DNRC)

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 0.6 - 1.5}

REPRESENTATIVE ALAN OLSON, HD 8, Central Montana, brought forward a bill requiring any school trust land interest and income that is in excess of \$45,292,000 must be deposited in the school flexibility account. He explained the intention of the bill is to set a threshold revenue which correlates to revenue estimates on state lands. If money is received in excess of the revenue estimate it will be funneled into flexibility accounts. REP. LEWIS indicated, subsequent to receiving the original fiscal note, revenue caps were amended; he has since received a new fiscal note. He stated there are additional amendments in response to the new fiscal note, as well as, an amendment which grants authority for spending any money received.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 1.6 - 6.3}

Bob Brown, Secretary of State, conveyed his department's support for HB 630, together with the support of Linda McCulloch, State Superintendent. He reiterated statements made by REP. OLSON indicating his agreement regarding the purpose and goal of the bill. Mr. Brown noted the projected amount that will be made available to schools, and urged the Committee support the bill.

Kathy Bramer, Member, Board of Land Commissioners, on behalf of Linda McCulloch, submitted written testimony **EXHIBIT**(eds56a01).

Eric Feaver, President, MEA-MFT, conveyed his organization's support for the bill. He stated this bill takes money generated from school lands and puts it to a purposeful use by public schools. It is above and beyond the state appropriation from the general fund, and it does so through a flex account. **Mr. Feaver** believes this is a good thing. He expressed his appreciation to the Committee and urged their support of the bill and the amendments.

Tom Figarelle, Forward Montana, conveyed his organization's support for **HB 630**. He stated, in agreement with previous proponents' testimony, this bill creates a positive mechanism for providing schools with cash immediately to help teachers help their students. He urged the Committee support the bill.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 6.7 - 14.6}

SENATOR MIKE COONEY asked **Tom Schultz, Administrator, Trust Land Division, DNRC**, what the approximate income for school trust lands has been for the past three years. **Mr. Schultz** replied the composite interest and revenue income was approximately \$45 million per year. **SEN. COONEY** inquired about the Department's future projections. **Mr. Schultz** stated the office reviewed revenue estimates from the budget office--thus, the reason for revised fiscal note--eventually adhering to the approximately \$45 million figure.

SENATOR BOB STORY, referring to a bill passed last session which dealt with wind-power generation on state lands, inquired where the revenue from that project is directed. **Mr. Brown** replied the excess would be directed to flex accounts. **SEN. STORY** inquired whether income received from wind-power generation was specifically directed to flex accounts. **Mr. Brown** replied he was uncertain; deferring to **Mr. Schultz**. **Mr. Schultz** explained revenues which are generated from distributed, renewable resources are directed to a guaranty account; the first funding source for education. He noted, to date, a very minimal amount of revenue has been generated through the project. **SEN. STORY** inquired whether any projected income from wind generation was included in the \$45 million estimate. **Mr. Schultz** replied he was uncertain which revenue streams were included in the overall projection.

SENATOR JEFF MANGAN inquired about subsequent fiscal notes. **REP. OLSON** replied a new fiscal note was issued on March 4. He indicated, with revisions, it is anticipated the fiscal note will be reduced to \$0.

SENATOR TOM ZOOK asked why the money is being directed to the flex account rather than the guaranty account. **REP. OLSON** the flex account is more appropriate because the amount will fluctuate from year to year. **SEN. ZOOK**, referring to testimony indicating this method of allocation will make the money immediately available to schools, asked the sponsor to explain. **REP. OLSON** explained the bill provides if excess revenue is realized, **OPI** may make the money available in the current year. **SEN. ZOOK** inquired whether **REP. OLSON** is a member of the Revenue & Transportation Committee. **REP. OLSON** replied in the negative.

SEN. STORY asked if the reason the fiscal note is working toward a zero dollar impact is because any money realized will presumably be spent in the schedule bill. **REP. OLSON** replied in the affirmative. **SEN. STORY** asked if it is correct that any money received in a flex account sits and accumulates until the next biennium. **REP. OLSON** indicated his understanding is in agreement with **SEN. STORY's**.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 14.8 - 19.5}

REP. OLSON conveyed appreciation to members of the Committee. He briefly explained the amendments, and noted how his interest arose in this issue.

Prior to formal closure of the hearing, **SEN. ZOOK** indicated the new fiscal note poses a few concerns. He asked **REP. OLSON** about the fiscal impact in 2004. **REP. OLSON** stated, subsequent to the release of the new fiscal note, he began work on the amendments. **SEN. ZOOK** asked if the fiscal note's projections were moot. **REP. OLSON** replied the numbers were changing daily, and it was not his intent to have a negative impact on the general fund.

EXECUTIVE ACTION ON HB 572

{Tape: 1; Side: A; Approx. Time Counter: 19.8 - 31.2}

{Tape: 1; Side: B; Approx. Time Counter: 1.4 - 22.3}

Motion: **SEN. ZOOK** moved that HB 572 BE CONCURRED IN.

Motion: SEN. ZOOK moved HB 057201.ACE.

Discussion:

SENATOR EDWARD BUTCHER stated his proposed amendments address his concern regarding a potentially unfunded mandate.

Motion: SEN. MANGAN motioned HB 057201.ACE be segregated into two parts: Part 1 for consideration is numbers 1, 3, 4 of the amendment, Part 2 for consideration is numbers 2 of the amendment.

Motion: SEN. MANGAN moved that HB 057201.ACE; PART ONE DO PASS.

Discussion:

SEN. BUTCHER reiterated his concern regarding language in the bill which seemed to him an unfunded mandate. He briefly discussed numbers 1, 3, and 4 of the amendment.

SENATOR JERRY BLACK indicated his perception was the amendment removed any mandatory language.

A brief discussion occurred regarding placement of the term "must" throughout the document.

Vote: Motion that HB 057201.ace DO PASS carried 6-4 with COONEY, ELLIOTT, MANGAN, and RYAN, via proxy, voting NO, and JOHNSON, via proxy, voting AYE.

Motion/Vote: SEN. BUTCHER moved that HB057201.ACE, PART TWO DO PASS.

Discussion:

SEN. ZOOK stated the original language was "must provide an opportunity," and he did not see a particular problem with the terminology.

SEN. MANGAN stated he was much more concerned with this particular amendment than with the others. He does not believe it is appropriate for the legislature to circumvent the work of an child study team that works with the child on a regular basis. If the team determines braille is the best method by which the child can learn, it is clear in federal and state law, the method must be provided. **SEN. MANGAN** stated the amendment is in contradistinction to our responsibility to educate children with disabilities.

SEN. BUTCHER stated there is an excellent program at the Montana School for the Deaf and Blind (**MSDB**) located in Great Falls; a program funded with state dollars. He does not believe it is appropriate to insist that each school in the state provide the same type of programs, because they quite simply cannot afford to do so. He believes there needs to be some local control.

SEN. MANGAN, addressing **SEN. BUTCHER's** concerns, stated flexibility for districts has been written into the bill under the IEP section; for example, whether an instructor will come from **MSDB**, and so forth. He stated the bill has nothing to do with blindness, it has to do with providing every child with an opportunity to learn to read. He believes preventing that opportunity is discriminatory. While he does not believe **SEN. BUTCHER's** intention was such, he does believe that would be the result of this amendment.

SEN. BUTCHER stated he did not agree with **SEN. MANGAN's** assertion. He does not see how the amendment discriminates against any child, it merely allows the district to have some control.

SEN. ZOOK requested authorization to pose questions to **Connie Erickson**; without objection. **SEN. ZOOK** asked **Ms. Erickson** about the distinction between "must" and "shall" in modern vernacular. **Ms. Erickson** stated "must" is used in the passive voice, "shall" is used in the active voice. Although having relatively the same meaning, it depends on whether the speech is passive or active. Both are mandatory terms.

SEN. STORY requested authorization to pose questions to **Ms. Erickson**; without objection. **SEN. STORY**, referring to the bill's reliance upon IEPs, asked whether it is always the case a district must provide every program, or may they transfer a student to a district that already has a program in place. He provided an example of a child with whom he was familiar where the district paid for transportation to a bordering school that had a successful program in place. **Ms. Erickson** replied, although not completely familiar with special education generally, her understanding is it would be handled on a case-by-case basis. She does understand not every district can provide all services, and, therefore, it must be a cooperative effort between parents, the child study team, and the school district.

Vote: Motion that HB 057201.ace, PART TWO DO PASS, failed 2-7 with **BUTCHER** and **BLACK** voting NO; **SEN. RYAN**, via proxy, voting AYE.

Motion: **SEN. ZOOK** moved that HB 572 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. STORY, referring to the fiscal note's indication that all schools are presently following this rule under federal law, stated he did not understand why the bill was before the Committee.

Vote: Motion failed 4-6 with **COONEY, ELLIOTT, MANGAN, and RYAN**, via proxy, voting AYE, and **JOHNSON**, via proxy, voting NO.

Motion/Vote: **SEN. ZOOK** moved that HB 572 BE INDEFINITELY POSTPONED. Motion carried 6-4 with **COONEY, ELLIOTT, MANGAN, and RYAN**, via proxy, voting NO, and **JOHNSON**, via proxy, voting AYE.

HEARING ON HB 656

Sponsor: REPRESENTATIVE ROD BITNEY

Proponents: Jerry Kaek, Employment Relations Division,
Department of Labor & Industry (DLI)

Opponents: NONE

Informational Witnesses: NONE

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 22.6 - 24.1}

REPRESENTATIVE ROD BITNEY, HD 77, Kalispell, brought forward a bill providing for the elimination of the Safety Employment Education & Training Advisory Committee. He stated the bill is at the request of the Department of Labor and Industry because the Committee no longer has any meaningful purpose and has not met since 1998. A legislative audit division report issued in November of 2002, recommended DLI either require members to meet annually or seek legislation eliminating the requirements.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 24.2 - 26.5}

Jerry Kaek, Employment Relations Division, DLI, conveyed his agency's support for the bill. He provided a brief history of the legislation which created the committee, and of the work done by the committee during the early years. **Mr. Kaek** reiterated

information regarding the legislative audit, and stated DLI has formed local safety focus groups that have taken over the duties of the committee. He urged the Committee recommend Do Concur on HB 656.

Questions from Committee Members and Responses:

No questions were posed by Committee members on this bill.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 27.1 - 27.2}

REP. BITNEY closed the hearing on HB 656 without additional comment.

EXECUTIVE ACTION ON HB 656

{Tape: 1; Side: B; Approx. Time Counter: 27.3 - 28.2}

Motion/Vote: SEN. BUTCHER moved that HB 656 BE CONCURRED IN. Motion carried 9-0; SENS. BLACK, JOHNSON, and RYAN voting AYE via proxy. SENATOR MIKE COONEY to carry.

EXECUTIVE ACTION ON HB 573

{Tape: 1; Side: B; Approx. Time Counter: 28.9 - 31}

Motion: SEN. COONEY moved that HB 573 BE CONCURRED IN.

Motion/Vote: SEN. COONEY moved that HB 057302.ACE DO PASS. Motion carried 8-0; RYAN and JOHNSON voting AYE via proxy; ELLIOTT and MANGAN excused.

Motion/Vote: SEN. COONEY moved that HB 573 BE CONCURRED IN AS AMENDED. Motion carried 8-0; with RYAN and JOHNSON voting AYE via proxy; ELLIOTT and MANGAN excused. SENATOR JEFF MANGAN to carry.

EXECUTIVE ACTION ON HB 285

{Tape: 2; Side: A; Approx. Time Counter: 0.2 - 4.6}

Motion: SEN. STORY moved that HB 285 BE CONCURRED IN.

Motion: SEN. STORY moved HB 028501.ACE.

Discussion:

CONNIE ERICKSON stated there were amendments to the bill from REPRESENTATIVE ROY BROWN (HB 028501.ace) and SENATOR BOB STORY (HB 028502.ace). Ms. Erickson explained which occupations were added by HB 028501.ace.

Vote: Motion that HB 028501.ace DO PASS carried 8-0; with BLACK, JOHNSON, and RYAN voting AYE via proxy, and SENS. ELLIOTT and MANGAN excused.

Motion: SEN. STORY moved that HB 028502.ACE DO PASS.

Discussion:

SEN. STORY explained the amendment adds EMTs and similar occupations, and makes the bill retroactive in application for those already overseas.

Vote: Motion carried 8-0; with BLACK, JOHNSON, and RYAN voting AYE via proxy, and SENS. ELLIOTT and MANGAN excused.

Motion/Vote: SEN. COONEY moved that HB 285 BE CONCURRED IN AS AMENDED. Motion carried 8-0; with BLACK, JOHNSON, and RYAN voting AYE via proxy, and SENS. ELLIOTT and MANGAN excused. SENATOR DAN MCGEE TO CARRY.

EXECUTIVE ACTION ON HJR 8

{Tape: 2; Side: A; Approx. Time Counter: 6.0 - 27.1}

Ms. Erickson explained--in response to a question posed during the hearing of HJR 8--this resolution's request will become a part of the study poll to be ranked and voted upon.

Motion: SEN. COONEY moved that HJR 8 BE CONCURRED IN.

Discussion:

SEN. COONEY stated the main question arising from this resolution was whether it would become a part of the study poll. Since Ms. Erickson provided clarification, he requested the Committee look favorably upon the request and allow the entire body to decide its' priority.

SEN. BUTCHER stated he believes sufficient data exists with regard to the issues underlying dropout rates. He does not see a need for another study of the same issues. He also does not believe the legislature can regulate the type of solutions necessary, nor can the legislature provide enough money to change contributing factors.

SEN. ZOOK stated he too is in opposition to the resolution due to the amount of data already available. He noted some underlying issues can be attributed to lack of employment on reservations, as noted by the sponsor in a previous bill. So too, as the sponsor noted during the hearing, the importance of having someone available to the child for support. He does not think the legislature is able to regulate personal behavior in that manner.

SEN. MANGAN, in response to **SENS. BUTCHER** and **ZOOK**, stated he does not agree the legislature can do nothing about these issues. He stated the legislature has not attempted to address these issues, therefore, we cannot know what it possible. Further, since members of the interim committee will be traveling to hearings in any event, he does not see the problem with adding this concern to the agenda.

SEN. STORY asked whether testimony during the hearing indicated the State-Tribal Relations Committee was to be terminated. **Ms. Erickson** replied in the negative.

SENATOR ROYAL JOHNSON, referring to questions posed during the hearing, asked for additional clarification regarding the status of the resolution subsequent to passage. **Ms. Erickson** explained the statute is very clear, the resolution will be placed on the study poll.

SEN. STORY sought additional clarification on the selection process. **Ms. Erickson** stated the study may be assigned to the committee despite a low rank depending upon staff recommendations, and so forth.

SEN. MANGAN inquired whether the selection committee could reassign the study to the Education & Local Government interim committee despite the title. **Ms. Erickson** replied in the affirmative. **SEN. MANGAN** asked if it were possible to amend to Title to reflect an alternative assignment if necessary. **Ms. Erickson** replied in the affirmative.

Motion: **SEN. MANGAN** moved that HJR 000801.ACE, A CONCEPTUAL AMENDMENT, DO PASS.

Discussion:

SEN. COONEY, noting his agreement with **SEN. STORY's** concerns, indicated his support for the amendment.

SEN. JOHNSON inquired whether the Title will allow for the suggested modification. **Ms. Erickson** replied she did not think the change would present a problem because this is not law, it is a resolution.

SEN. ZOOK expressed concern the sponsor may not agree to the change because she is a member of the State-Tribal Relations Committee.

Vote: Motion carried 7-2 with **JOHNSON** and **ZOOK** voting NO, **SENS. BLACK** and **RYAN** voting AYE via proxy, and **ELLIOTT** excused.

Motion/Vote: **SEN. COONEY** moved that HJR 8 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. BUTCHER reiterated concerns regarding the use of resources toward a highly saturated source of data. He believes if someone would care to create a strategic state plan for addressing the issues, they could rely upon available data.

SEN. MANGAN emphasized, if the resolution receives enough votes it will be appropriately assigned, but it must proceed through the process. If enough members of the body believe the study is appropriate, then possibly it is.

Vote: Motion carried 6-4 with **BUTCHER**, **GLASER**, **JOHNSON**, and **ZOOK** voting NO, and **BLACK**, **ELLIOTT**, and **RYAN** voting AYE via proxy. **SENATOR JEFF MANGAN TO CARRY.**

EXECUTIVE ACTION ON HJR 10

{Tape: 2; Side: A; Approx. Time Counter: 27.3 - 28.5}

Motion/Vote: **SEN. JOHNSON** moved that HJR 10 BE CONCURRED IN. Motion carried unanimously; with **BLACK**, **ELLIOTT**, and **RYAN** voting AYE via proxy.

CHAIRMAN BILL GLASER requested the Committee's position on a Wednesday evening meeting to discuss **HB 302**. Meeting to be held at 6:00 p.m.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. BILL GLASER, Chairman

TARI ELAM, Secretary

BG/TE

EXHIBIT (eds56aad)